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Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:)	Case No. 2:11-bk-30426-BR
)	
)	Chapter 11
SMB GROUP, INC.,)	
)	
Debtor.)	
)	
<hr/> SMB GROUP, INC.)	Adv Case No. 2:13-ap-01020-BR
)	
Plaintiff,)	SMB GROUP, INC.'S ANSWER TO
v.)	COUNTERCLAIMS OF RICHARD K.
)	DIAMOND
RICHARD K. DIAMOND,)	
)	
Defendant.)	
)	
<hr/> RICHARD K. DIAMOND,)	
)	
Counterclaimant,)	
)	
v.)	
)	
SMB GROUP, INC., as debtor)	
and debtor-in-possession,)	
)	
Counter-Defendant)	
)	

1
2 **RICHARD K. DIAMOND**)
3 Third-Party Plaintiff,)
4 v.)
5 **IN CHUL SHIN, aka JEFF SHIN,**)
6 **an individual; UNION TRIM,**)
7 **INC.; USB GROUP, INC.; ALPHA**)
8 **SEWING MACHINE,**)
9 Defendant.)

10 **ANSWER TO COUNTERCLAIM¹**

11 SMB Group, Inc., as Plaintiff and Counter-defendant ("SMB"),
12 hereby answers the Counterclaim of Counterclaimant Richard K
13 Diamond as follows:

14 121. SMB denies the allegation to the extent it
15 mischaracterizes SMB as a "purported separate legal entity".
16 Otherwise, SMB admits the allegations in paragraph 121 of the
17 Counterclaim.

18 122. SMB admits the allegations in paragraph 122 of the
19 Counterclaim.

20 123. SMB admits the allegations in paragraph 123 of the
21 Counterclaim.

22 124. SMB admits the allegations in paragraph 124 of the
23 Counterclaim.
24
25
26

27 ¹ For ease of reference, the paragraph numbering in this Answer
28 is intended to correspond to the relevant paragraphs of the
Counterclaim.

1 125. SMB admits the allegations in paragraph 125 of the
2 Counterclaim to the extent that Counterclaimant was the former
3 Trustee in two matters, *In re Union Trim, Inc.* (2:11-bk-19513-
4 BR); and *In re USB* (2:11-bk-19514-PC). SMB denies the remainder
5 of the allegations in paragraph 125.

6 126. SMB denies the allegation to the extent it
7 mischaracterizes SMB as a "purported separate legal entity".
8 Otherwise, SMB admits the allegations in paragraph 126 of the
9 Counterclaim.

10 127. SMB admits the allegations in paragraph 127 of the
11 Counterclaim as to USB and SMB, and denies the remainder of
12 paragraph 127.

13 128. SMB admits the allegations in paragraph 128 of the
14 Counterclaim that Shin is a resident of Los Angeles County, State
15 of California.

16 129. SMB lacks information sufficient to admit or deny the
17 allegations in paragraph 129 of the Counterclaim, and on that
18 bases denies said allegations.

19 130. SMB lacks information sufficient to admit or deny the
20 allegations in paragraph 130 of the Counterclaim, and on that
21 bases denies said allegations.

22 131. SMB denies the allegations in paragraph 131 of the
23 Counterclaim.

24 132. SMB denies the allegations in paragraph 132 of the
25 Counterclaim.

26 133. SMB denies the allegations in paragraph 133 of the
27 Counterclaim.

28 134. SMB denies the allegations in paragraph 134 of the
Counterclaim.

1 135. SMB denies the allegation in paragraph 135 of the
2 Counterclaim to the extent it mischaracterizes Union Trim, Inc.
3 as a "purported separate legal entity". SMB further denies the
4 allegation in paragraph 135 of the Counterclaim that Union Trim
5 filed a voluntary petition. SMB, based on information and
6 belief, believes that attorney Gene Choe, without the knowledge
7 or consent of Union Trim, filed a pleading entitled "voluntary
8 petition" under Chapter 7 of the Bankruptcy Code.

9 136. SMB responds to the allegations in paragraph 136 by
10 stating that the court's records speak for themselves, and SMB
11 need not admit or deny this allegation.

12 137. SMB responds to the allegations in paragraph 137 by
13 stating that the court's records speak for themselves, and SMB
14 need not admit or deny this.

15 138. SMB admits the allegations in paragraph 138 of the
16 Counterclaim, except it denies that Shin signed the Electronic
17 Filing Declaration, or the Statement Regarding Authority to Sign
18 and File Petition.

19 139. SMB admits the allegations in paragraph 139 of the
20 Counterclaim.

21 140. SMB denies the allegations of paragraph 140 of the
22 Counterclaim. Union Trim filed no bankruptcy schedules. SMB,
23 based on information and belief, believes that attorney Gene
24 Choe, without the knowledge or consent of Union Trim, may have
25 filed such schedules.

26 141. SMB responds by stating that the court's records speak
27 for themselves, and SMB need not admit or deny the allegation in
28 paragraph 141 of the Counterclaim.

1 142. SMB responds by stating that the court's records speak
2 for themselves and SMB need not admit or deny the allegation in
3 paragraph 142 of the Counterclaim.

4 143. SMB responds to the allegations on paragraph 143 of the
5 Counterclaim by stating that the court's records speak for
6 themselves, and SMB need not admit or deny this allegation.

7 144. SMB responds to the allegations on paragraph 144 of the
8 Counterclaim by stating that the court's records speak for
9 themselves, and SMB need not admit or deny this allegation.

10 145. SMB responds to the allegations on paragraph 145 of the
11 Counterclaim by stating that the court's records speak for
12 themselves, and SMB need not admit or deny this allegation.

13 146. SMB responds to the allegations on paragraph 146 of the
14 Counterclaim by stating that the court's records speak for
15 themselves, and SMB need not admit or deny this allegation.

16 147. SMB denies the allegations in paragraph 147 of the
17 Counterclaim. Golden Textile was doing business with SMB, dba
18 Union Trim; it was not doing business with Union Trim, Inc.

19 148. The bases for the dismissal of the Union Trim Case are
20 contained in the court records speak for themselves, and SMB
21 responds that it does not need to admit or deny this allegation.

22 149. SMB denies the allegation in paragraph 149 of the
23 Counterclaim to the extent it mischaracterizes USB Group, Inc. as
24 a "purported separate legal entity". SMB further denies the
25 allegation in paragraph 149 of the Counterclaim that USB filed a
26 voluntary petition. SMB, based on information and belief,
27 believes that attorney Gene Choe, without the knowledge or
28 consent of USB filed a pleading entitled "voluntary petition"
under Chapter 7 of the Bankruptcy Code.

1 150. SMB responds to the allegations in paragraph 150 of the
2 Counterclaim by stating that the court documents speak for
3 themselves, and SMB does not need to admit or deny this
4 allegation.

5 151. SMB responds to the allegations in paragraph 151 of the
6 Counterclaim by stating that the court records speak for
7 themselves, and SMB does not need to admit or deny this
8 allegation.

9 152. SMB admits the allegations in paragraph 152 of the
10 Counterclaim, except it denies the allegation that Shin signed
11 the Petition.

12 153. SMB admits the allegations in paragraph 153 of the
13 Counterclaim.

14 154. SMB lacks information sufficient to admit or deny the
15 allegations in paragraph 154 of the Counterclaim, and on that
16 bases denies said allegations.

17 155. SMB lacks information sufficient to admit or deny the
18 allegations in paragraph 155 of the Counterclaim, and on that
19 bases denies said allegations.

20 156. SMB lacks information sufficient to admit or deny the
21 allegations in paragraph 156 of the Counterclaim, and on that
22 bases denies said allegations.

23 157. SMB lacks information sufficient to admit or deny the
24 allegations in paragraph 157 of the Counterclaim, and on that
25 bases denies said allegations.

26 158. SMB lacks information sufficient to admit or deny the
27 allegations in paragraph 158 of the Counterclaim, and on that
28 bases denies said allegations.

1 159. SMB lacks information sufficient to admit or deny the
2 allegations in paragraph 159 of the Counterclaim, and on that
3 bases denies said allegations.

4 160. SMB lacks information sufficient to admit or deny the
5 allegations in paragraph 160 of the Counterclaim, and on that
6 bases denies said allegations.

7 161. SMB responds to the allegations in paragraph 161 of the
8 Counterclaim by stating that the court's records speak for
9 themselves, and SMB does not need to admit or deny this
10 allegation.

11 162. SMB lacks information sufficient to admit or deny the
12 allegations in paragraph 162 of the Counterclaim, and on that
13 bases denies said allegations.

14 163. SMB responds to the allegations in paragraph 163 of the
15 Counterclaim by stating that the court's records speak for
16 themselves, and SMB does not need to admit or deny this
17 allegation.

18 164. SMB responds to the allegations in paragraph 164 of the
19 Counterclaim by stating that the court's records speak for
20 themselves, and SMB does not need to admit or deny this
21 allegation.

22 165. SMB responds to the allegations in paragraph 165 of the
23 Counterclaim by stating that the court's records speak for
24 themselves, and SMB does not need to admit or deny this
25 allegation.

26 166. SMB lacks information sufficient to admit or deny the
27 allegations in paragraph 166 of the Counterclaim, and on that
28 bases denies said allegations.

1 167. SMB responds to the allegations in paragraph 167 of the
2 Counterclaim by stating that the court's records speak for
3 themselves, and SMB does not need to admit or deny this
4 allegation.

5 168. SMB admits the allegations in paragraph 168 of the
6 Counterclaim.

7 169. SMB lacks information sufficient to admit or deny the
8 allegations in paragraph 169 of the Counterclaim, and on that
9 bases denies said allegations.

10 170. SMB admits the allegations in paragraph 170 of the
11 Counterclaim. Diamond was informed that SMB was not a debtor and
12 that Diamond had improper possession of SMB's property, books,
13 and records. Diamond refused to turn over the books and records
14 as requested, and wrongfully refused access to them except for
15 the limited purpose of preparing "schedules" and a "statement of
financial affairs".

16 171. SMB responds to the allegations in paragraph 171 of the
17 Counterclaim by stating that the court's records speak for
18 themselves, and SMB does not need to admit or deny this
19 allegation.

20 172. SMB responds to the allegations in paragraph 172 by
21 stating that no such information was ever requested; that had it
22 been requested, counsel for SMB would have pointed out to Diamond
23 that any such information was already in Diamond's possession
24 insofar as he wrongfully maintained custody of SMB's records; and
25 that Diamond had refused SMB or its counsel access to SMB's
26 records. SMB denies the allegations in paragraph 172 of the
27 Counterclaim in that the allegation is based upon the wrongful
28 presumption that such information was ever requested.

1 173. SMB denies the allegations in paragraph 173 of the
2 Counterclaim.

3 174. SMB responds to the allegations in paragraph 174 of the
4 Counterclaim by stating that the court's records speak for
5 themselves, and SMB has no need to admit or deny this allegation.

6 175. SMB responds to the allegations in paragraph 175 of the
7 Counterclaim by stating that the court's records speak for
8 themselves, and SMB need not admit or deny this allegation.

9 176. SMB responds to the allegations in paragraph 176 of the
10 Counterclaim by stating that the court's records speak for
11 themselves, and SMB need not admit or deny this allegation.

12 177. SMB responds to the allegations in paragraph 177 of the
13 Counterclaim by stating that the court's records speak for
14 themselves, and SMB need not admit or deny this allegation.

15 178. SMB admits the allegations in paragraph 178 of the
16 Counterclaim to the extent that the key was provided sometime in
17 June, but lacks information or belief as to the specific date.

18 179. SMB admits the allegations in paragraph 179 of the
19 Counterclaim to the extent that the key was provided sometime in
20 June, but lacks information or belief as to the specific date.

21 180. SMB denies the allegation to the extent it
22 mischaracterizes SMB Group, Inc. as a "purported separate legal
23 entity". Otherwise, SMB admits the allegations in paragraph 180
24 of the Counterclaim.

25 181. SMB admits the allegations in paragraph 181 of the
26 Counterclaim.

27 182. SMB admits the allegations in paragraph 182 of the
28 Counterclaim.

1 183. SMB admits the allegations in paragraph 183 of the
2 Counterclaim.

3 184. SMB admits the allegations in paragraph 184 of the
4 Counterclaim. Having wrongfully denied access to SMB or its
5 counsel of the books and records of SMB, which were wrongfully in
6 possession of Diamond, SMB was unable to provide any other
7 information.

8 185. SMB responds to the allegations in paragraph 185 of the
9 Counterclaim by stating that it is unaware of the motivation as
10 to why Diamond refused to grant SMB, as the debtor, possession
11 of, or access to, its documents and property, but it admits the
12 remaining portion of paragraph 185 of the Counterclaim.

13 186. SMB denies the allegation to the extent it
14 mischaracterizes SMB Group, Inc. as a "purported separate legal
15 entity". Otherwise, SMB admits the allegations in paragraph 186
16 of the Counterclaim.

17 187. SMB responds to the allegations in paragraph 187 of the
18 Counterclaim by stating that the court's records speak for
19 themselves, and SMB need not admit or deny this allegation.

20 188. SMB responds to the allegations in paragraph 188 of the
21 Counterclaim by stating that the court's records speak for
22 themselves, and SMB need not admit or deny this allegation.

23 189. SMB responds to the allegations in paragraph 189 of the
24 Counterclaim by stating that the court's records speak for
25 themselves, and SMB need not admit or deny this allegation.

26 190. SMB responds to the allegations in paragraph 190 of the
27 Counterclaim by stating that the court's records speak for
28 themselves, and SMB need not admit or deny this allegation.

1 191. SMB admits the allegations in paragraph 191 of the
2 Counterclaim.

3 **RESPONSE TO FIRST COUNTERCLAIM FOR RELIEF**

4 **(MONEY DAMAGES FOR FRAUD)**

5 192. In response to paragraph 192, SMB incorporates by
6 reference, as if fully set forth herein, its responses contained
7 in paragraphs 1-72, inclusive.

8 193. SMB denies the allegations in paragraph 193 of the
9 Counterclaim.

10 194. SMB denies the allegations in paragraph 194 of the
11 Counterclaim.

12 195. SMB denies the allegations in paragraph 195 of the
13 Counterclaim.

14 196. SMB denies the allegations in paragraph 196 of the
15 Counterclaim.

16 197. SMB denies the allegations in paragraph 197 of the
17 Counterclaim.

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(PRIVILEGE)**

20 198. Counter-defendant alleges that the conduct attributed
21 to the Counter-defendant in its Counterclaim constituted a
22 communication made in the course of a judicial or quasi-judicial
23 proceeding, by a participant in the proceeding, for the purpose
24 of achieving the object of the litigation. The statement also had
25 a logical relation to the action. Therefore, defendant's actions
26 were absolutely privileged pursuant to Section 47(b) of the
27 California Civil Code.

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SECOND AFFIRMATIVE DEFENSE

(LACK OF STANDING)

199. As an individual, Diamond lacks standing to pursue any claims as against the Counter-defendant.

FOURTH AFFIRMATIVE DEFENSE

(NO RELIANCE)

200. Diamond did not reasonable rely on any representations by Counter-defendant.

FIFTH AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

201. The Counterclaim, and each and every claim for relief therein, fail to state a cause of action against the Counter-defendant.

SIXTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

202. The Counterclaim, and each and every claim for relief therein, are barred by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

(MISCONDUCT BY DIAMOND)

203. Diamond's misconduct, including, but not limited to, depriving the Counter-defendant of a reasonable opportunity to review its books and records in a timely manner and improperly ignoring instructions to timely turn-over the Counter-defendant's property, constitutes negligent and/or willful misconduct on the part of Diamond. Damages, if any, sustained by Counter-claimant were, therefore, proximately caused by the conduct of Diamond.

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EIGHTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

204. The Counterclaim, and each and every claim for relief therein, are barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

205. By reason of his own acts and conduct, Counterclaimant is estopped from asserting its first claim for relief for fraud.

TENTH AFFIRMATIVE DEFENSE

(WAIVER)

206. By reason of his own acts and conduct, Counterclaimant has waived the right to assert the first claim for relief for fraud.

ELEVENTH AFFIRMATIVE DEFENSE

(ACTS OF OTHERS)

207. If Counter-claimant suffered any loss, damage, or detriment in any manner or amount whatsoever, which Counter-defendant denies, such loss, damage or detriment was caused in whole or in part by the acts and conduct of persons other than the Counter-defendant over which Counter-defendant had no control. Any award of damages to plaintiff must be allocated in proportion to the fault of each such other person.

TWELFTH AFFIRMATIVE DEFENSE

(FAILURE TO TIMELY ASSERT/WAIVER & RELEASE)

208. Counterclaimant, as the temporary and permanent Trustee in *In re Union Trim, Inc.* (2:11-bk-19513-BR); and *In re USB* (2:11-bk-19514-PC), had at his disposal an array of remedies, including, but not limited to, Rule 11 Sanctions, that Counterclaimant could, had he considered the Counter-defendant's

1 conduct to so merit, filed and pursued as the Trustee.
2 Counterclaimant did not do so, and has thereby waived and
3 released any potential claims arising out of *In re Union Trim,*
4 *Inc.* (2:11-bk-19513-BR); and *In re USB* (2:11-bk-19514-PC).

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 **(SUPERSEDING CAUSE)**

7 209. If Counterclaimant suffered any damage, detriment, or
8 loss, which Counter-defendant denies, such loss, detriment, or
9 damage was caused in whole or in part by superseding and
10 intervening causes over which the Counter-defendant had no
11 control. Any award of damages must be allocated in proportion to
12 the loss, detriment, or damage caused by such superseding or
13 intervening cause(s).

14 **WHEREFORE**, Counter-defendant SMB Group, Inc., pray for
15 judgment on the Counterclaim as follows:

- 16 1. That Counterclaimant take nothing by way of its Claim for
17 Relief asserted in the Counterclaim;
18 2. For its costs of suit herein;
19 3. For its attorneys' fees in a sum according to proof at
20 trial; and
21 4. For such other and further relief as the Court deems just
22 and proper.

23 DATED: May 24, 2013

LAW OFFICES OF DAVID A. TILEM

24
25 By: Michael Avramis for
26 KEVIN S. LACEY
27 Attorneys for SMB GROUP, INC.
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
206 North Jackson Street, Suite 201, Glendale CA 91206

A true and correct copy of the foregoing document entitled (*specify*): **SMB GROUP, INC.'S ANSWER TO COUNTERCLAIMS OF RICHARD K. DIAMOND** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **5/24/13**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Howard Kollitz HKollitz@DGDK.Com, DanningGill@gmail.com
- Kevin S Lacey klacey@laddlaw.net,
kevinlacey@tilemlaw.com; malissamurguia@tilemlaw.com; dianachau@tilemlaw.com; joanfidelson@tilemlaw.com
- David B Lally davidlallylaw@gmail.com
- Steven J Schwartz sschwartz@dgdk.com, DanningGill@gmail.com
- David A Tilem davidtilem@tilemlaw.com,
malissamurguia@tilemlaw.com; dianachau@tilemlaw.com; joanfidelson@tilemlaw.com
- United States Trustee (LA) ustregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **5/24/13**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Barry Russell
United States Bankruptcy Court
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

5/24/2013

Malissa Murguia

Date

Printed Name

Malissa Murguia

Signature